

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0434-05
Bill No.: SS for SCS for HCS for HB Nos. 73 & 47
Subject: Public Assistance; Department of Social Services; Drugs and Controlled Substances
Type: Original
Date: April 27, 2011

Bill Summary: This legislation requires drug screening and testing for Temporary Assistance for Needy Families applicants and recipients.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
General Revenue	(Unknown Greater than \$662,459 to Unknown Greater than \$995,401)	(Unknown Greater than \$647,935 to Unknown Greater than \$980,877)	(Unknown Greater than \$758,450 to Unknown Greater than \$1,091,392)
Total Estimated Net Effect on General Revenue Fund	(Unknown Greater than \$662,459 to Unknown Greater than \$995,401)	(Unknown Greater than \$647,935 to Unknown Greater than \$980,877)	(Unknown Greater than \$758,450 to Unknown Greater than \$1,091,392)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 12 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Federal*	\$0	\$0	\$0
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

*Income and cost would net to \$0.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
General Revenue	2 FTE	3 FTE	4.5 FTE
Total Estimated Net Effect on FTE	2 FTE	3 FTE	4.5 FTE

Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Section 208.027:

In response to a previous version of this proposal, officials from the **Office of Administration-Administrative Hearing Commission** assume the proposal would have no fiscal impact on their agency.

Officials from the **Office of the Secretary of State (SOS)** state many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

Officials from the **Office of the Attorney General (AGO)** responds that the Department of Social Services (DSS) estimates that the proposal would result in an additional 1,700 administrative hearings, and that approximately 10% of those hearings then receive judicial review in circuit court. AGO assumes it would need an additional 1.5 Assistant Attorney General I and 1 Legal Secretary to handle the increased in caseload. If there is a significant increase in claims over time, the AGO may seek an additional appropriation to adequately represent DSS.

Oversight assumes the AGO would see a growth in caseload each fiscal year. Therefore, Oversight assumes AGO would need 1 Assistant Attorney in FY 12, 1 Assistant Attorney and 1 Legal Secretary in FY13 and 1.5 Assistant Attorney's and 1 Legal Secretary in FY14.

ASSUMPTION (continued)

Officials from the **Department of Mental Health (DMH)** states the proposed legislation requires the Department of Social Services (DSS) to refer applicants who test positive for the use of a controlled substance to a substance abuse treatment program approved by the Division of Alcohol and Drug Abuse (ADA). The DMH assumes that it will treat the applicant or recipient and also pay for the services.

Because of limited funding, the demand for DMH-funded substance abuse treatment in Missouri already far exceeds the capacity of contracted community providers. A significant cost would be incurred if the proposed drug testing program was actually successful in identifying drug users, if drug users were effectively referred to DMH treatment providers, if the drug users in fact presented themselves for treatment, and if DMH was required to fund treatment for all referred applicants/recipients. However, the Department cannot estimate the number of TANF clients that will test positive for drugs or the number of those who test positive that will present for treatment. Treatment costs per person in a CSTAR program is \$2,809 (\$1,028 General Revenue and \$1,781 Federal). To treat an additional 100 persons will cost \$102,800 in General Revenue alone. Therefore, the fiscal impact is estimated as an unknown to greater than \$100,000 cost for General Revenue and Federal Funds.

Oversight notes that states can earn the federal medical assistance percentage (FMAP) on Medicaid program expenditures.

Officials from the **Department of Social Services-Division of Legal Services (DLS)** states in September 2010, there were 29,354 adults considered work-eligible recipients under the TANF program and would potentially be required to submit to a drug test. It is assumed that 8% of the general population of the United States engages in the use of illegal drugs. Therefore, it will be assumed that 8% of the 29,354 work-eligible adults in the TANF program engage in illegal drug use. Thus, 2,348 individuals in the TANF program are engaging in illegal drug use. It is assumed that all 2,348 individuals will be reported to the Children's Division (CD) for suspected child abuse. The assumption is made that all 2,348 individuals will demonstrate behavior that constitutes reasonable suspicion to believe the individual is engaging in the illegal use of a controlled substance that is suspected of causing child abuse. It is assumed that the child abuse investigation initiated by the report made under this section will determine that there is reasonable suspicion that 50% of the 2,348 of the work-eligible recipients have engaged in the use of an illegal controlled substance and will be subjected to drug testing. The proposed legislation does not require the CD to determine that any child abuse occurred, it just requires the Division to determine if there is reasonable suspicion that the recipient engaged in the illegal use of a controlled substance.

ASSUMPTION (continued)

Therefore, based on these assumptions approximately 1,174 recipients will be drug tested. It is assumed that 50% of this number will refuse to submit to the drug test and 50% will submit to the drug test. Therefore, 587 recipients will be drug tested. It is assumed that 75% of the 587 will test positive. Based on these assumptions, 1,027 recipients annually can potentially request an administrative hearing to either contest their refusal to submit to the drug test or to contest the outcome of the positive drug test - (587 + 440 = 1,027).

The way the proposed legislation is written Family Support Division (FSD) cannot declare a recipient ineligible until after an administrative hearing. This will likely result in a high percentage of hearings. Assuming 40% of the recipients who are adversely impacted by the testing requirement object this would result in a minimum of approximately 411 additional hearings annually. However, the increase in hearings by 411 is only the number of hearings resulting from the initial phase of testing. The proposed legislation grants FSD authority to conduct additional drug tests once the recipient submits to drug treatment. Additional administrative hearings will arise from the subsequent drug tests. It is assumed that 20% of those who test positive (440 recipients) will go to drug treatment. Thus, 88 recipients will go to drug treatment and be subjected to additional drug testing. It is assumed that 80% of those who test positive will take the two-year period of ineligibility for TANF benefits. The proposed legislation does not state who is responsible for paying for the drug treatment program. Most TANF recipients it is assumed would not be in the position of paying for drug treatment. Of those TANF recipients who do go to drug treatment, it is assumed that 44% of the 88 will successfully complete their treatment program. Therefore, 38 recipients will fail treatment and it is assumed will fail their second drug test. Assuming 40% of the 38 contest the second drug test result, this will result in 15 additional hearings for a total of 426 additional hearings per year. There will also be additional hearings over the selection of the selected protective payee. This number of hearings cannot be determined. Therefore, based on the current number of work eligible recipients, at least one additional hearing officer would need to be hired based on the assumption that the hearing officers hold approximately 900 hearings per year.

In addition to the current number of recipients, new applicants become eligible throughout the year, creating turnover in the caseload. FSD estimates that there is an average of 3,120 applications per month for TANF assistance. It is assumed that 76% (2,371) of the applications include a work-eligible individual. Using the same assumptions as above, up to 8% (2,276) may be reported to CD (2,371 X 8% X 12 months = 2,276). This basically doubles the number of referrals to CD, the number of drug tests, and ultimately the number of potential hearings for DLS. Therefore, DLS will need another hearing officer to serve the applicant population.

ASSUMPTION (continued)

A further consideration is the cost of the hearings. Drug testing cases require scientific and medical evidence as the issue in these cases usually involves a dispute over the accuracy of the scientific testing methods and of the effects of a substance in the human body. Experts in toxicology and medicine are routinely used in these hearings. These expert witnesses may require payment for their services unless this cost is included in the overall drug-testing contract. As an example, the one medical review officer who practices in Jefferson City charges \$515 dollars per hour for live testimony or \$315 dollars per hour for deposition testimony. If additional testimony from other doctors or drug testing experts is required, which is not covered by the contract, then they will require payment for the use of their expertise.

Oversight assumes the DLS would see a growth in caseload each fiscal year. Therefore, Oversight assumes DLS would need 1 Hearing Officer in FY 12 & FY13 and 2 Hearing Officers in FY14.

Officials from the **Department of Social Services-Information Technology Services Division (ITSD)** states the system changes that would be needed to fulfill the requirements of this proposal are:

1. A second new screen will be needed in FAMIS to display and allow entry of data related to requesting a drug test, storing the results of the test, tracking the hearing process, tracking compliance with qualified treatment program and imposing and tracking the two year period of ineligibility. The screen must also store the date and other information regarding mandatory caseworker report to the Child Abuse and Neglect hotline.
2. The Missouri Work Assistance system (currently under construction) will need to generate a record to be processed by FAMIS when a TANF recipient either tests positive for drug use or refuses to be tested when a test is required for work readiness program. FAMIS must generate an alert to the caseworker to make a report to the CAN hotline.
3. Modification to the eligibility determination modules to discontinue the portion of cash grant attributable to the offending individual and generate a letter advising of the benefit reduction and the date when the 2 year ineligibility period ends.
4. System must send the appropriate correspondence to client regarding disqualification for use of a non-prescribed controlled substance.
5. Produce reports on disqualified individuals for case management purposes and to facilitate compliance tracking through FAMIS Managed Reporting.

ASSUMPTION (continued)

<u>Function</u>	<u>Work Effort (hours)</u>
Analysis/Design	120 hours
Create/Update Specification Documents	120 hours
Update Data Model	120 hours
Modify Eligibility Determination Process	80 hours
Create Screen to Capture/Display Eligibility Factor Data	120 hours
Program to Generate MWA record for FAMIS	40 hours
Program FAMIS to Generate Alert to Caseworker	40 hours
Notices extract programming	80 hours
AFP programming for notices	80 hours
Update Code Tables	40 hours
Development Coordination	40 hours
Testing (Unit and System)	120 hours
Managed Reporting (data warehouse extracts)	120 hours
Managed Reporting (WebFOCUS report coding)	80 hours
Total:	1,220 hrs

- The report to Children's Division will not be an electronic interface with the Family and Children Electronic System. Caseworkers will call the Child Abuse and Neglect (CAN) hotline to file the report.
- No changes will be required to any Children's Division systems. The Family and Children Electronic System to supports child abuse and neglect investigations related to illegal drug use.
- Proof of participation in a DMH approved drug/alcohol abuse program will be in the form of documentation provided by the client.
- Existing programming in FAMIS will automatically adjust any cases (such as Food Stamps) that consider the TA grant as income when the eligibility determination is executed on the TA case with the reduced grant.
- State staff will perform programming to generate alert to caseworker based on receipt of record from MWA system indicating failed drug test or refusal to take drug test.
- Estimates for programming to generate notices to recipients assume that state staff will code the extracts and AFP (Advanced Function Printing) modules.

ASSUMPTION (continued)

- Estimate for the Managed Reporting function assumes that consultants will complete the changes for data warehouse extract programming and existing state staff will complete the programming for the WebFOCUS reports.
- State staff will perform all updates to code tables.
- State staff will complete any programming changes required on the Missouri Work Assistance system.
- There will be no impact after implementation in FY12 so projecting no costs past 1st yr.
- Based on the above assumptions, state staff will perform 360 hours of the effort and consultants will perform 860 hours.

Current rate for IT consultants for the FAMIS project averages \$90.00 per hour. Current rate for ITSD staff averages \$42.56 per hour.

There is not a federal match for systems work relating to the Temporary Assistance program. Cost for systems work will be funded by General Revenue.

Total Cost: (360 hours X \$42.56/hr) + (860 hours X \$90.00/hr) = \$92,722.

Officials from the **Department of Social Services-Children's Division** does not anticipate a significant fiscal impact as a result of this proposed legislation.

Officials from the **Department of Social Services-Family Support Division** states there were 37,363 recipients at a point in time in March and approximately 36,624 new applicants approved annually for a total population possibly subject to drug testing. At this time it is unknown how the drug testing program and the screening process will be implemented, therefore the Division is providing a range. The Division is using a \$50 cost to provide a drug test. This cost includes the collection of the sample, transportation and chain of custody, MRO Test Result Review to insure that the drug test will stand up under a legal challenge.

Based on a total of 73,987 possible recipients and approved applicants the fiscal impact is :

Test of 10%	\$369,935
Test of 25%	\$924,838
Test of 50%	\$1,849,675

SEC:LR:OD (12/02)

ASSUMPTION (continued)

Test of 75% \$2,774,513
 Test of 100% \$3,699,350

Oversight assumes, for fiscal note purposes only, the intent of the General Assembly is to test 10% to 25%. Therefore, Oversight reflects the fiscal impact as a range from 10% to 25%. Oversight assumes, for fiscal not purposes only, the cost of the drug test would be \$30 (\$5 for the test and \$25 for administration). Therefore, Oversight reflects the fiscal impact as \$221,961 to \$554,903.

The cost for start up for camera's and developing the system to incorporate pictures on the EBT card is unknown at this time and could be significant. Additionally, there would be an on-going cost added to the contract for EBT. Based on pricing on a previous contract, the cost to include the picture on the EBT card was \$.04 per card per month. The estimated annual cost would be 42,556 families x \$.04 x 12 months = \$20,427 for the contract. All of the cards would need to be replaced the first year. It will cost approximately \$1.60 per card to replace cards the first year and every 3 years after that. There are 42,556 families plus 4,500 families with 2 parent households for a total number of cards to be replaced of 47,056 the average cost would be \$1.60. Based on this the cost is estimated at Unknown but greater than \$100,000.

Oversight does not know how many, if any, recipients would loose their TANF benefits or how many would fall into recidivism. Oversight assumes savings, if any, would be deferred because it is unknown how many would enter into a drug treatment program.

<u>FISCAL IMPACT - State Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
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GENERAL REVENUE FUND

Savings - Department of Social Services

Reduced TANF Payments	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
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Costs - Office of the Attorney General

Personal Services	(\$35,417)	(\$73,225)	(\$95,634)
Fringe Benefits	(\$18,537)	(\$38,326)	(\$50,055)
Equipment and Expense	(\$28,985)	(\$37,819)	(\$46,488)
<u>Total Costs - AGO</u>	<u>(\$82,939)</u>	<u>(\$149,370)</u>	<u>(\$192,177)</u>
FTE Change - AGO	1 FTE	2 FTE	2.5 FTE

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2012 (10 Mo.)	FY 2013	FY 2014
<u>Costs - Department of Mental Health</u> Program Cost	<u>(Greater than</u> <u>\$100,000)</u>	<u>(Greater than</u> <u>\$100,000)</u>	<u>(Greater than</u> <u>\$100,000)</u>
<u>Costs - Department of Social Services</u>			
Personal Service-DLS	(\$32,226)	(\$39,847)	(\$82,086)
Fringe Benefits-DLS	(\$16,867)	(\$20,856)	(\$42,964)
Equipment and Expense-DLS	(\$15,744)	(\$15,901)	(\$19,262)
<u>Total Costs - DSS-DLS</u>	<u>(\$64,837)</u>	<u>(\$76,604)</u>	<u>(\$144,312)</u>
FTE Change - DSS-DLS	1 FTE	1 FTE	2 FTE
<u>Costs - Department of Social Services</u> ITSD Program Costs	<u>(\$92,722)</u>	<u>\$0</u>	<u>\$0</u>
<u>Costs - Department of Social Services-</u> <u>Family Support Division</u>			
Drug Testing	(\$221,961 to \$554,903)	(\$221,961 to \$554,903)	(\$221,961 to \$554,903)
EBT Photo Id Cards	<u>(Unknown</u> <u>Greater than</u> <u>\$100,000)</u>	<u>(Unknown</u> <u>Greater than</u> <u>\$100,000)</u>	<u>(Unknown</u> <u>Greater than</u> <u>\$100,000)</u>
<u>Total Costs - DSS-DFS</u>	<u>(Unknown</u> <u>Greater than</u> <u>\$321,961 to</u> <u>Unknown</u> <u>Greater than</u> <u>\$654,903)</u>	<u>(Unknown</u> <u>Greater than</u> <u>\$321,961 to</u> <u>Unknown</u> <u>Greater than</u> <u>\$654,903)</u>	<u>(Unknown</u> <u>Greater than</u> <u>\$321,961 to</u> <u>Unknown</u> <u>Greater than</u> <u>\$654,903)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(Unknown</u> <u>Greater than</u> <u>\$662,459 to</u> <u>Unknown</u> <u>Greater than</u> <u>\$995,401)</u>	<u>(Unknown</u> <u>Greater than</u> <u>\$647,935 to</u> <u>Unknown</u> <u>Greater than</u> <u>\$980,877)</u>	<u>(Unknown</u> <u>Greater than</u> <u>\$758,450 to</u> <u>Unknown</u> <u>Greater than</u> <u>\$1,091,392)</u>
Estimated Net FTE Change for General Revenue Fund	2 FTE	3 FTE	4.5 FTE

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2012 (10 Mo.)	FY 2013	FY 2014
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FEDERAL FUNDS

<u>Income - Department of Mental Health</u> Federal Assistance	<u>Greater than</u> <u>\$100,000</u>	<u>Greater than</u> <u>\$100,000</u>	<u>Greater than</u> <u>\$100,000</u>
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<u>Costs - Department of Mental Health</u> Program Costs	<u>(Greater than</u> <u>\$100,000)</u>	<u>(Greater than</u> <u>\$100,000)</u>	<u>(Greater than</u> <u>\$100,000)</u>
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ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

Section 208.027:

Most of the drugs testing facilities in the major metropolitan areas are small businesses and this legislation could have a significant positive impact on the number of drug tests each of those businesses would complete.

If the testing facilities were part of the state government, there would be no impact on small businesses.

FISCAL DESCRIPTION

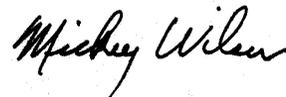
Section 208.027:

This legislation requires the Department of Social Services to develop a program to screen and test applicants or recipients of temporary assistance for needy families (TANF) benefits who the Department has reasonable cause to believe, based on the screening, engages in illegal use of controlled substances. Any applicant or recipient who is found to have tested positive for the use of a controlled substance after an administrative hearing shall be declared ineligible for temporary assistance for needy families benefits for a period of three years from the date of the administrative hearing. The Department shall refer an applicant or recipient who tested positive for the use of a controlled substance under this act to an appropriate substance abuse treatment program approved by the Division of Alcohol and Drug Abuse within the Department of Mental Health. The Department shall promulgate rules to develop the screening and testing provisions of this section.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Mental Health
Department of Social Services
Office of the Secretary of State
Office of Administration-Administrative Hearing Commission
Office of the Attorney General



Mickey Wilson, CPA
Director
April 27, 2011